

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
01/24/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41K-0003-R-2022  
White, Eugene  
5.00

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)

\*\*\*\*\*

CLAIMANT: LF Ranch MT LLC

OBJECTORS: USA (Dept of Agriculture Forest Service)

**CASE 41K-0003-R-2022**

41K 96481-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to "issue remarks" resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41K 96481-00 received an objection from the US Forest Service, but did not receive issue remarks during the DNRC's review

of the claims.

The claim was consolidated into Case 41K-0003-R-2022 to resolve the objection.

### FINDINGS OF FACT

1. On July 19, 2022, the Court consolidated the above-captioned claim and set a filing deadline for the parties to file settlement documents resolving the Forest Service's objection.

2. On September 6, 2022, the parties filed a *Stipulation*. The *Stipulation* asserts that the legal land descriptions of point of diversion and place of use ID No. 1 could be incorrectly interpreted as including federal land. In order to prevent such an interpretation, the *Stipulation* proposes the following:

The following information remark should be added to claim 41K 96481-00:

**POINT OF DIVERSION AND PLACE OF USE ID NO. 1 ARE LIMITED TO HES 1115.**

2. According to the *Stipulation*, the addition of the above-listed information remark would resolve the Forest Service's objection to claim 41K 96481-00.

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSIONS OF LAW

1. Based on the information contained in the *Stipulation*, the information remark shown in Finding of Fact No. 2 should be added to the abstract of claim 41K 96481-00. The Forest Service's objection should be considered resolved.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Benjamin Sudduth  
Sudduth Law PLLC  
PO Box 507  
Bozeman, MT 59771-0507  
(406) 272-2390  
Benjamin@Sudduthlaw.com

Eve W. McDonald, Trial Attorney  
Natural Resources Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
999 18th St, South Terrace, Suite 370  
Denver, CO 80202  
(303) 844-1381  
Evelyn.mcDonald@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

Mark Widerschein,  
NRS-ENRD US DOJ  
PO Box 7611  
Washington, DC 20044-7611  
202-532-5803  
Mark.Widerschein@Usdoj.Gov  
Montanabasins.ENRD@USDOJ.GOV

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SUN RIVER**  
**BASIN 41K**

**Water Right Number:** 41K 96481-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LF RANCH MT LLC  
PO BOX 6196  
DENVER, CO 80206 0196

**Priority Date:** OCTOBER 30, 1864

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** ELK CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNW	12	18N	8W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		W2	6	18N	7W	LEWIS AND CLARK
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
<b>Period of Use:</b> JANUARY 1 TO DECEMBER 31						

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNW	12	18N	8W	LEWIS AND CLARK
2			W2	6	18N	7W	LEWIS AND CLARK

---

**Remarks:**

POINT OF DIVERSION AND PLACE OF USE ID NO. 1 ARE LIMITED TO HES 1115.